

AMENDED IN SENATE MAY 11, 2004
AMENDED IN SENATE APRIL 26, 2004
AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1451

Introduced by Senator Figueroa

February 19, 2004

An act to add Title 1.81.4 (commencing with Section 1798.98) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1451, as amended, Figueroa. Privacy guarantees: contracts.

Existing law requires a business to ensure the privacy of a customer's records and personal information, as defined. Existing law also prohibits a person or entity from publicly posting or displaying an individual's social security number. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated 3rd parties. The California Financial Information Privacy Act, requires a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information and authorizes a consumer to direct that the information not be shared with certain entities. Existing law also establishes standards for the collection, use, and disclosure of information gathered in connection with insurance transactions.

This bill would require a person ~~or entity that conducts business in California and shares the personal or confidential information, as~~

~~defined, of its customers with any independent contractors that are physically located outside of California or the United States and that are not part of, or affiliated with, the person or entity pursuant to the federal Gramm Leach Bliley Act to include specified provisions in its contracts and subcontracts guaranteeing, among other things, the right to informational privacy under existing law and consenting to jurisdiction in California courts, as specified. The bill would also require these persons and entities to clearly disclose to all California customers, prior to sharing the customer's information, that the customer's personal or confidential information will be entrusted to those parties located outside of California or the United States and would impose strict liability on these persons and entities in certain circumstances who has access to information protected under specified privacy laws and who is not subject to any of those laws to treat the information with the same care that would be required of a person who is subject to any of those provisions. The bill would also provide that the person would be civilly liable, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature to do all of the*
2 *following:*

3 (a) *Reaffirm the importance of the laws of this state and federal*
4 *laws protecting the privacy of confidential, personal information.*

5 (b) *Ensure that confidential information regarding a*
6 *California resident that is legally protected within California will*
7 *be protected when it is used by parties located outside the State of*
8 *California.*

9 (c) *Ensure that any person located outside the State of*
10 *California who has access to legally protected confidential*
11 *information regarding a resident of California and who violates a*
12 *law governing the confidentiality of that information shall be*
13 *subject to legal action in the courts of this state for the violation*
14 *of that law.*

15 SEC. 2. Title 1.81.4 (commencing with Section 1798.98) is
16 added to Part 4 of Division 3 of the Civil Code, to read:

17

TITLE 1.81.4. PRIVACY GUARANTEES

~~1798.98. (a) For purposes of this section, “personal or~~
1798.98. (a) For purposes of this section, “privacy law”
means any of the following:

(1) Part 2.6 (commencing with Section 56) of Division 1.
(2) Title 1.81.1 (commencing with Section 1798.85).
(3) Title 1.82 (commencing with Section 1799).
(4) Division 1.2 (commencing with Section 4050) of the
Financial Code.

(5) Article 6.6 (commencing with Section 791) of Chapter 1 of
Part 2 of Division 1 of the Insurance Code.

(b) The following shall apply to any person who has access to
information that is protected pursuant to a privacy law listed in
subdivision (a) and who is not subject to any of those provisions:

(1) That person shall treat that information with the same care
that would be required of a party who is subject to any privacy law
listed in subdivision (a).

(2) That person shall be liable in an action for civil damages
in the courts of this state brought by a resident of this state,
regardless of where the violation occurs, to the same extent as
another party who is subject to any privacy law listed in
subdivision (a) would be liable for a violation of that provision.
For purposes of this paragraph, that person shall be deemed to
consent to jurisdiction in the courts of this state.

(c) If a business is subject to any privacy law listed in
subdivision (a), and if any personal information that is processed
by that business regarding customers located in this state may be
processed by persons who are located outside of the United States,
that business shall disclose to customers located in this state that
their personal information may be processed by persons located
outside of the United States. The business may include that
disclosure with any other disclosures the business already provides
to those customers. The business shall make that disclosure once
to each customer.

~~confidential information” means an individual’s social security
number, medical information as defined in subdivision (g) of
Section 56.05, personally identifiable financial information as
defined in subdivision (b) of Section 4052 of the Financial Code,~~

~~personal information as defined in subdivision (s) of Section 791.02 of the Insurance Code, or a tax return.~~

~~(b) Every person or entity that conducts business in California and shares the personal or confidential information of any California resident with any independent contractor that is not part of, or affiliated with, the person or entity or its corporate structure as provided in the federal Gramm-Leach-Bliley Act (Public Law 106-102), and is physically located outside California, or outside of the United States of America, shall include the following provisions in its contracts:~~

~~(1) That the independent contractor shall treat the personal or confidential information with the utmost care and respect for its personal or confidential nature and shall use the personal or confidential information solely for the performance of any duties or obligations set out in the contract.~~

~~(2) That the independent contractor shall comply with all applicable provisions of the following:~~

~~(A) Part 2.6 (commencing with Section 56) of Division 1.~~

~~(B) Title 1.81.1 (commencing with Section 1798.85) and Title 1.82 (commencing with Section 1799).~~

~~(C) Division 1.2 (commencing with Section 4050) of the Financial Code.~~

~~(D) Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.~~

~~(3) That the independent contractor consents to jurisdiction in the courts of California and agrees that all actions or proceedings arising in connection with the contract and related to an unlawful disclosure or use of personal or confidential information, including any action brought by a third party beneficiary to the contract, shall be tried and litigated exclusively in the State of California.~~

~~(4) That any California resident whose personal or confidential information is disclosed in violation of the contract shall be deemed a third party beneficiary of the contract.~~

~~(5) That any subsequent contract entered into by an independent contractor involving the sharing of personal or confidential information received under the contract shall contain all of the provisions required by this subdivision.~~

~~(c) Every person or entity that conducts business in California and shares the personal or confidential information of any~~

1 California resident with any independent contractor that is not part
2 of, or affiliated with, the person or entity or its corporate structure
3 as provided in the federal Gramm-Leach-Bliley Act (Public Law
4 106-102), and is physically located outside California, or outside
5 the United States of America, shall be strictly liable for any action
6 by that independent contractor that violates any of the laws set
7 forth in paragraph (2) of subdivision (b), if that violation involves
8 the personal or confidential information that has been shared by
9 the person or entity with its independent contractor.

10 (d) Every person or entity that conducts business in California
11 and shares the personal or confidential information of any of its
12 customers with any independent contractor that is physically
13 located outside California, or outside of the United States of
14 America, shall clearly disclose to all California customers prior to
15 sharing that customer's information that the customer's personal
16 or confidential information will be entrusted to persons outside of
17 California or outside of the United States of America. The
18 disclosure may make reference to the protections set out in
19 subdivision (b).

20 (e) Nothing in this section shall prohibit contract provisions
21 that provide greater protections to personal or confidential
22 information than those provided by the laws set forth in paragraph
23 (2) of subdivision (b).

